RDM INTERESTS

IBLA 81-702 Decided August 27, 1981
81-732

Appeal from decisions of the Utah State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers. U-48496, U-48514, and U-48581.

Affirmed.

1. Act of May 21, 1930 -- Oil and Gas Leases: Lands Subject to -- Rights-of-Way: Generally

An oil and gas lease offer for lands in a reservoir right-of-way from other than the owner of the right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

2. Administrative Practice -- Notice: Generally -- Oil and Gas Leases: Rights-of-Way Leases -- Rights-of-Way: Generally

Under the "notation rule," where a reservoir right-of-way affecting certain land is noted on the official records of the Bureau of Land Management, that notation is effective to bar leasing of the oil and gas therein under the Mineral Leasing Act of 1920. This result follows even if the reservoir right-of-way should have been terminated.

APPEARANCES: Robert L. Thornton for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

RDM Interests has appealed two decisions of the Utah State Office, Bureau of Land Management (BLM), dated April 13, 1981, rejecting three noncompetitive oil and gas lease offers, U-48496, U-48514, and U-48581, because the offers covered lands embraced in reservoir rights-of-way U-8474 or U-7737. 1/ The decision noted that the lands could be leased pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1).

In its statement of reasons, appellant argues that rights-of-way U-8474 and U-7737 ceased to exist on or before July 17, 1980, and therefore do not preclude its oil and gas lease offers. Appellant notes that the rights-of-way were issued effective July 16, 1970, and that Departmental regulation 43 CFR 2802.1-2(b) (1979) 2/ states that the time for filing proof of construction may be extended for reasonable lengths of time not to exceed 10 years from the date of the grant. Appellant also

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1/ Offer U-48496 covers 668 acres in Box Elder County, Utah, described as follows:

T. 7 N., R. 11 W., Salt Lake meridian
sec. 1: N 1/2 N 1/2; sec. 14: lots 1-3;
sec. 15: W 1/2 NE 1/4; sec. 27: SW 1/4 SW 1/4;
sec. 28: NE 1/4 NE 1/4; and sec. 34: lots 1-4, W 1/2 W 1/2

Offer U-48514 covers 1,489 acres in Box Elder County, Utah, described as follows:

T. 7 N., R. 10 W., Salt Lake meridian
sec. 5: lots 1-6; W 1/2 SW 1/4;
sec. 6: lots 1-7; E 1/2 SE 1/4; sec. 7: lots 1-6;
sec. 8: lots 1-4; W 1/2; sec. 17: Lots 1-5; and
sec. 18: lots 1-3
T. 8 N., R. 10 W., Salt Lake meridian
sec. 31: SE 1/4; lots 3-6

Offer U-48581 covers 746 acres located in Box Elder County, Utah, described as follows:

T. 6 N., R. 9 W., Salt Lake meridian
sec. 7: all available; sec. 8: all available;
sec. 19: all available; sec. 20: all available;
sec. 21: lots 1, 2, 3, 4, 7; and sec. 22: lots 1, 5

The decision to reject this offer was based in part on the fact that some of the lands are included in oil and gas leases U-38864, U-38902, and U-38900. Appellant has indicated that it has no opposition to the rejection of any lands included in these leases.

2/ The Departmental regulations governing rights-of-way, 43 CFR Part 2800, were revised effective July 31, 1980. See 45 FR 44526 (July 1, 1980). There is no provision comparable to the cited regulation in the revised regulations which are only applicable to FLPMA rights-of-way. James W. Smith (On Reconsideration), 55 IBLA 390 (1981). As the subject rights-of-way have not been conformed to FLPMA application of the revised regulations governing rights-of-way to the facts presented by this appeal would not benefit appellant. See Henry Offe, 64 I.D. 52, 55-56 (1957).

suggests that the extensions of time which were given to the grantees were improper due to a lack of due diligence on the part of the grantees toward completion of their project. Finally appellant notes that no annual rentals have been paid for the rights-of-way since June 1979.

Our examination of the rights-of-way files reveals that on June 13, 1979, the original grantees assigned their interest in the rights-of-way to the Aluminum Company of America (ALCOA). ALCOA then requested an extension of time to file proof of construction. In response, BLM informed ALCOA that it must file certain information before BLM would process the transfer of the rights-of-way to ALCOA. BLM also indicated that the original grants of the rights-of-way contained no expiration date but the time for submitting proof of construction could be extended to July 17, 1980, upon a satisfactory showing of need, filing of a progress report, and a demonstration of due diligence toward completion of its project.

On March 10, 1980, BLM issued two decisions to the original grantees: one notified them that the rental for the rights-of-way had been increased and the other gave notice that failure to submit the required proof of construction within 30 days or to appeal would result in action being taken to cancel the rights-of-way.

On April 8, 1980, ALCOA submitted some but not all of the information requested by BLM. BLM then issued a decision dated April 28, 1980, giving ALCOA 30 days to file the remaining information or suffer rejection of its request that the rights-of-way be transferred to it. The decision also granted an extension of time to submit proof of construction to July 16, 1980, citing 43 CFR 2802.1-2(b) (1979).

In a letter dated September 5, 1980, ALCOA indicated that, although its interest in the reservoir rights-of-way continued, it would not be paying the rental fee because it was unable to extend the rights-of-way.

BLM has not taken any further action against the rights-of-way and notation of each has not been removed from the BLM status plats.

[1, 2] We have previously examined the situation presented to us by the appeals herein in Republic Oil and Mining Co., 35 IBLA 212 (1978), involving another noncompetitive oil and gas lease offer for lands included in right-of-way U-7737. In that case, we noted first that

> [w]here public lands have not been withdrawn from mineral leasing, they are ordinarily subject to oil and gas leasing in the discretion of, and under conditions imposed by the Secretary, Stanley M. Edwards, 24 IBLA 12, 83 I.D. 33 (1976). In the exercise of this discretion, ordinarily the BLM should make a determination whether leasing the lands with appropriate stipulations would be in the public interest. Fred P. Blume, 28 IBLA 58 (1976).

35 IBLA at 213. We then held:

> The case at bar, however, is controlled by the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1970), and by the regulation cited in BLM's decision, 43 CFR 3100.0-3(d)(1), providing that leasing of oil and gas deposits in and under railroads and other rights-of-way acquired under any law of the United States is restricted to the owner of the right-of-way or his assignee. A. A. McGregor, 18 IBLA 74 (1974). Cf. R. S. McKnight, 72 I.D. 153 (1965).

35 IBLA at 214. Therefore, so long as the rights-of-way herein continue to exist, BLM may not accept an application to lease for oil and gas the lands covered by the rights-of-way from other than the owner of the right-of-way or his assignee.

Reservoir rights-of-way U-8474 and U-7737 were issued with no expiration date. As we have noted, appellant argues that they must have expired under 43 CFR 2802.1-2(b) (1979) on July 16, 1980, and alternatively that they were previously improperly extended. Even assuming, arguendo, that these contentions may be correct, the continued notation of the reservoir rights-of-way on the official records of the BLM State Office is effective to bar any inconsistent disposition. Republic Oil and Mining Co., supra; see Joyce A. Cabot, 63 I.D. 122, 123 (1956), discussing Martin Judge, 49 L.D. 171 (1922). 3/ We find that BLM properly rejected appellant's offers.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

3/ For a more detailed explanation of the application and effect of the "notation rule," see Stephen Kenyon, 51 IBLA 368, 374-5 (1980), and cases cited therein.